IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1401 of 2002

Reserved on 10.4.2007

Date of decision 13.04.2007

Karam Chand Petitioner

Vs.

State of H.P. and another Respondents

Coram:

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

The Hon'ble Mr.Justice Kuldip Singh, Judge

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr. Surinder Sharma, Advocate.

For the Respondents : Mr.Ashutosh Burathoki, Additional Advocate General, with Mr.Vijay Thakur Dy. Advocate General.

Per V.K.Ahuja,J.

Petitioner joined the respondent department as driver on daily wage basis on 5.3.1991. He had been discharging his duties as such except for some period due to injury in his leg as alleged by him. Respondent Department took a policy decision to regularize the services of daily waged drivers, who had completed eight years service on 31.3.1999, vide their Notification dated 8.7.1999.

Respondent No.2 considered the case of the petitioner for regularization and his case was recommended for regularization. However, he was not regularized since he did not possess the educational qualification as he was 8th fail and his case was recommended for

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

relaxation of educational qualification. Respondent No.1 did not agree with the recommendation of respondent No.2 and rejected the case of the petitioner for relaxation, vide communication dated 31.3.2000.

The said action was challenged by the petitioner by filing an O.A. before the Tribunal who vide its impugned order dated July 16,2002 observed that no legal vested right of the petitioner has been infringed and hence the petition was dismissed.

We have heard Mr.Surinder Sharma, learned counsel appearing for the petitioner and Mr.Ashutosh Burathoki, learned Additional advocate General, appearing for the respondents and have also gone through the record carefully.

The submissions made by learned counsel for the petitioner were firstly that the petitioner had completed eight years of service as per the notification and since no educational qualification was prescribed earlier and on the day he completed eight years service there were no such rules prescribing minimum educational qualification of 8th pass therefore the petitioner was entitled to be confirmed. The second plea taken by the learned counsel for the petitioner was that in a similar case the Hon'ble Tribunal had granted the relief in favour of the said driver but arbitrarily it was not granted in favour of the petitioner, therefore the impugned order is liable to be set aside.

The above facts as mentioned are not disputed by the respondents. It is also not disputed that the petitioner had completed eight years of service when the rules were notified by the State Government.

The minimum educational qualification was prescribed as middle pass and petitioner admittedly is 7th fail. His case was recommended by respondent No.2 to respondent No.1 for relaxation which relaxation was not given in favour of the petitioner. The mere fact that his case was recommended by Chief Conservator of Forests (Respondent No.2) is not

sufficient to hold that he has got inherent right that the said recommendation should be accepted. This is the discretion of the State Government to relax the condition if it deems proper in the facts and circumstances of the case. The petitioner admittedly had completed eight years of service on 31.3.1999 and the rules however were notified by the State Government on 24.5.1999 which were published in the Raj Patra on 9th June, 1999 as mentioned above. The policy of regularization of all the drivers who have completed eight years of continuous service for regularization was issued, vide letter dated 8.7.1999 at page 40 of the paper book i.e. Annexure RI attached with reply to the O.A. No.1426 of 2000 filed by the respondents before the Hon'ble Tribunal. A cause of action has arisen to the petitioner from this date only when the policy became applicable in the case of the petitioner. However, before that date the Government had already notified the rules for the appointment of the drivers vide notification Annexure PG dated 24.5.1999 which became applicable in June,1999. Thus when the policy came into operation on 8.7.1999 the rules had already been framed for recruitment to the post of driver and since the cause of action has arisen to the petitioner only on declaration of the policy he had to fulfill the eligible criteria which was not fulfilled by him. It was within the right of the State Government to relax the rules or not and therefore the petitioner had no right to be considered for appointment as driver. In regard to the second plea raised by the learned counsel for the petitioner that in a similar case of one Shyam Lal the relief has been granted by the State Tribunal, the judgment passed by the said Tribunal whether on facts in an earlier case or laying down the law is binding upon the said Tribunal and the said judgment should have been brought to the notice of the said Tribunal. However, there is nothing on record to show if the said judgment was brought to the notice of the Hon'ble Tribunal or not though copy of the judgment in that case, namely,

Shyam Lal vs. State of H.P. and others in O.A.No.1393 of 2000 was placed on record of this court and allegations were also made in regard to those findings given by the Tribunal. The said judgment of the Tribunal in another case though the facts may be similar is not binding upon this court though it could be binding upon the Tribunal who was to consider this plea if raised during the course of arguments. The said judgment is not binding upon this court so that it can be followed in this case also and therefore the impugned order passed by the State Administrative Tribunal calls for no interference by this court. There is no merit in the petition filed by the petitioner which is dismissed accordingly.

(V.K. Ahuja), J.

April 13 ,2007(g) **(Kuldip Singh), J.**